

**AMESBURY ZONING BOARD OF APPEALS**  
**CITY HALL AUDITORIUM, 62 FRIEND STREET**  
**THURSDAY, OCTOBER 23, 2014 – 7:00 P.M.**

**Present: Sharon McDermot, Matt Sherrill, Bob Orem, Matt Vincent, Bill Lavoie, and David Haraske**

**Absent: Donna Collins**

**Also Present: Building Inspector Denis Nadeau, Recording Secretary Susan Yeames.**  
**Minutes transcribed by Paul Bibaud.**

**Minutes: Sept. 25, 2014: Sharon McDermot made a motion to accept minutes as is. Motion was seconded by Bob Orem. Vote was unanimous.**

**Tim Bailey-Gould** is seeking a **SPECIAL PERMIT / FINDING** under the Amesbury Zoning Bylaws Section XI K.2 to return an existing single family home into a two family residence at 39 Cedar Street, Amesbury, in an R8 Zoning District, Precinct 3.

**Matt Sherrill:** Mr. Bailey-Gould: It has been brought to our attention that you have only filed for Special Permit for your conversion, and it has been found on your application that there is an error that requires at least 80 feet minimum lot frontage in order for you to convert your home, as you only have 70 feet, I spoke to you about this issue and have asked if you would consider postponing this hearing until our next meeting on Dec. 11. What we need from you is a letter in writing that says that you agree to continue your hearing until our next meeting on Dec. 11. You can see Denis to help you work your way through the Variance application and then just come back in front of us on Dec. 11. As long as you agree to that, then you just need to see Denis, but you have to give Denis your letter, allowing us to hold off until our next meeting.

**MATMEG REALTY TRUST** is seeking a **VARIANCE** under Amesbury Zoning Bylaws Section XI. K.1 (1, 2, 4) to convert a two family dwelling into a three family dwelling at 129 Friend Street, Amesbury, in an R8 Zoning District, Precinct 4.

Sitting in on this hearing will be: Bill Lavoie, Matt Sherrill, Bob Orem, David Haraske, and Matt Vincent. We will do the Variance first, and as long as that gets approved, we will do the **SPECIAL PERMIT**. Also heard simultaneously will be the following:

**MATMEG REALTY TRUST** is seeking a **SPECIAL PERMIT / FINDING** under Amesbury Zoning Bylaws Section XI. K1 to convert a two family dwelling into a three family dwelling at 129 Friend Street, Amesbury, in an R8 Zoning District, Precinct 4.

**Paul Gagliardi, attorney for MATMEG Realty Trust.** I request we do the whole package together, doing the Variance first, for better presentation and for time concerns. (Board agrees). I will outline what we're looking for, why we are looking for it, and then go through the Variance requirements for each. We are going for a Special Permit, as well as a Variance. The reason for the variance is because we do not meet all of the requirements under K.1 in particular. Requirement #1, that the lot contain at least 12,000 square feet, we have 11,400 square feet, so we're seeking a variance from that provision. We're also seeking a variance from the minimum lot frontage, which the required is 80 feet. Again, we do not meet that. We have, I think the application said we had 70 feet. I think the deed actually reflects the fact that we actually have

64.7 feet. I think that was a typographical error, and I'd like to amend both petitions accordingly. Then requirement #4 that all other dimensional requirements of the Zoning District in which the conversion is proposed are met. We also do not meet the left side yard setback. We have 14 feet, and the required is 15 feet I believe. Otherwise, we meet all of the dimensional requirements. So we're seeking the variance for three things: the area, frontage, and left side yard setback.

On the Variance, as you know, there are certain items that need to be shown in order to qualify for a Variance. Those are contained in the bylaw in Section XI.3, the findings required before you can grant a Variance owing to circumstances relating to soil conditions, shape or topography of the land or structures, especially affecting such land or structures but not affecting generally the zoning district on which the land is located in lieu of enforcement, a provision of this bylaw, would involve substantial hardship, financial or otherwise, to the petitioner or applicant, and the desirable relief may be granted without substantial detriment to the public good without nullifying or substantially derogating from the intent and purposes of the bylaw. Now, this house and the lot itself pre-existed zoning by many years. I have a copy of the lot plan from the early sixties when this lot was first created. The house located on this property was built in the 1800s, according to the assessors records. This house is unique, the structure is unique on this property, in that it is a rather large structure, not so much in footprint but in height. It is a full three story building. It has about 1200 or better square feet of area on each level. The house in the late 80s, the third floor was converted, it was finished, and was done as so many others were under the prior building inspector, who gave them the ok. It is not allowed, but go right ahead. We know there are many of those stories. So that has been there since that time. It has been used informally as a third unit. It is currently being used as a third unit. The impetus to be here tonight was created when the applicant went to refinance this property, and the lender and appraiser could not approve the loan, because it was a three family and it is only zoned for a two family. So they have a completed third floor on this property that is creating undue hardship to them, in that it has been done, it is in use now, but it is causing problems for their ability and future owner's ability to finance this property.

Re: location of the house, the house has been there since the 1800s. The lot is at least, I have a 1961 plan that shows the lot exactly as it exists now. Not sure when it was created. But both the house and the lot were created long before zoning was enacted. To move the house is an impossibility. To enlarge the frontage on Friend Street is impossible. To increase the lot size is impossible. So if a Variance is not granted, then they will not be able to convert this property from an existing 2 family to a 3 family, and get the best use out of the property. Based upon the structure and the fact that one of the purposes of the zoning bylaw is to prevent overcrowding and making density too great on properties. Given the fact that this has been used as a 3 family since the late 80s, I don't think to legalize it creates any overcrowding, not be detrimental to the purposes of the bylaw, and for that reason, we ask you for the variance to allow us to do this.

Re: the special permit itself, there are a number of requirements under Section K.1 for the board to find in order to grant the Special Permit to allow conversion from a 2 family to a 3 family.

1) that the lot contain 12,000 square feet. We're asking you to vary that. We actually have 11,400 square feet. 2) Frontage: requires 80 feet of frontage, and this lot has 64.7. We ask you vary that. 3) At least 3 parking spaces, and later on, I believe the bylaw requires 5 spaces for a 3 unit. We do have the 5 space with parking out back. They are planning on moving that shed on the plan and creating a sixth spot for parking. So there is plenty of parking. 4), dimensional requirements of the zoning district are met. We're asking for variances for the side yard setback, lot size and the frontage requirements. The maximum number of dwelling units allowed in previously

existing, one family dwelling shall be two and a 2 family dwelling shall be three. This is an existing 2 family dwelling. We're asking to convert to a 3 unit dwelling. All proposals for a Special Permit requirement in Section X.J, which we meet all of those requirements. Those requirements are as follows:

The proposed use is listed in the table of use regulations. It is. The proposed use is essential or desirable to the public convenience: This is essential or desirable to the public convenience and welfare. Affordable rental units are necessary. Requested use will not create undue traffic: it is only one unit being added. It exists now. We're not creating more traffic or congestion, or impair pedestrian safety. Requested use will not overload any public water, drainage or sewer usage: We're talking about one unit. Not an issue.

Requested use will not impair the integrity or character of the district or the adjoining districts. This is an R8 district. There are many 2 and 3 family units. We don't believe this will cause an issue. The requested use will not, by its addition to the neighborhood cause an excess of that particular use. Again, we submit that while it is in character with the neighborhood, it is not going to create an excessive number of 3 unit houses in the district. Any questions for me on this?

**Bob Orem:** You indicated there was ample parking? (Paul = yes). Is there something in the package? There is supposed to be space for 5 parking spaces.

**Paul Gagliardi:** There is a plan that is attached to this. There were 2 plans. One shows just the building on the lot. Another second plan shows the parking on the lot. The second plan, with the parking showing, and there is a 40 foot width to the parking area, by 48 feet, which is ample room for 5 to six vehicles. A space is normally 9 feet wide by 18 feet in depth. So this shows ample room. Again, the shed is to be removed, creating a sixth parking spot.

**Matt Sherrill:** Could you tell us again, Paul, the basis for the hardship?

**Paul Gagliardi:** The basis for the frontage and the area, it is a lot that has existed since before 1961. It is a lot that can't be changed, or added to, and we can't increase the frontage. For the setbacks, the structure is on the lot and has been there since the 1800s. To create a situation where we would bring that into compliance, would require moving it, which is a hardship to the applicant and probably near impossible.

**Denis Nadeau, building inspector:** Was this a three family when they purchased this home?

**Paul Gagliardi:** This has been in the family since at least 1961. I believe it was the first deed I saw on this. It was a two family at the time. In 1987, the prior building inspector told them they could add a third unit on the third floor.

**Bill Wallace, one of the owners of the property:** We're just trying to formalize an informal situation that has existed for almost 30 years and was allowed to go into play, but now my mother in law has passed away, the informal situation really can't exist. It is all family owned. I am in favor of this application.

**Motion** to close and discuss was made by Matt Vincent and seconded by David Haraske.

1. Basis for hardship? Lot size and placement of building, and the shape of the lot and building.
2. Does it generally affect the district? No.
3. What would be the substantial detriment to the public good if allowed? None.
4. Does this derogate from the intent of the bylaw? No.

Voting on the Variance.

**Motion** by Bob Orem to close the variance and vote. David Haraske seconded the motion.

VOTE

Bob Orem: Yes.

Matt Vincent: Yes.

Bill Lavoie: Yes.

Matt Sherrill: Yes.

David Haraske: Yes.

**Variance has been approved.**

Special Permit.

1. Does it currently exist in the table of uses? Yes.
2. Is this essential or desirable to the public convenience and welfare? Yes.
3. Will not create undue traffic or impede pedestrian safety? No change.
4. Will not overload the public systems? No.
5. Special Conditions: In no instance shall the lot be less than 12,000 square feet. We've given a variance for that.

The minimal lot frontage must be at least 80 feet in the R8 zone. We've given a variance on that. All other dimensional requirements of the zoning district in which the conversion is proposed are met. The one that was not met was the left yard setback, and we gave a variance on that.

In instances where the Board of Appeals has requested three dwelling units in one residential structure, the Board of Appeals shall require a Site Plan that indicates off street parking for at least five vehicles, and said plan shall indicate that no designated off street parking spaces are located in the required front yard setback of the zoning district in question. I think we did ask for an explanation on the plan, and there was enough space for five and will probably create a sixth spot for parking.

For all conversions, all health and safety regulations of the city and commonwealth shall be met and a report to that effect shall be obtained by the applicant from the building inspector. There are no known health and safety regulations at this point that are not met.

No application for a residential conversion special permit shall apply to the building inspector for a building permit or occupancy permit unless and until a special permit for conversions is approved by the Board of Appeals. Further, all building permits and occupancy permits issued by the building inspector shall be in conformance with the conditions if any stipulated in the special permit approval. So we're going through that process right now.

All proposals for conversions are subject to the special permit requirements and procedures set forth in Section X.J of this bylaw. So I think all of those have been met.

If they weren't, they were given a variance.

This will not impair the health, character or welfare of the district? No.

Is this going to create an excess of three family homes in the neighborhood? No.

Any more discussion on the Special Permit? If not...

**Motion** to close and vote on the special permit was made by Bob Orem, and seconded by Bill Lavoie.

Bill Lavoie: Yes.

Matt Vincent: Yes.

Bob Orem: Yes.

Matt Sherrill: Yes.

David Haraske: Yes.

So the **Special Permit**, as well as the **Variance**, have been **approved**.



**Michael J. Picard Sr. and Michael J. Picard Jr., trustees of 176 Elm Street Realty Trust,** are seeking a **VARIANCE** under Amesbury Zoning Bylaws Section XL.K 1 (4) for a pre-existing non-conforming structure at 129 Elm Street, Amesbury, in an R8 Zoning District, Precinct 2.

Also to be heard simultaneously is the following:

**Michael J. Picard Sr. and Michael J. Picard Jr., trustees of 176 Elm Street Realty Trust,** are seeking a **SPECIAL PERMIT / FINDING** under Amesbury Zoning Bylaws Section XI.K.1 and Section IX.B to alter a pre-existing non-conforming structure and to convert it into a three family dwelling at 176 Elm Street, Amesbury, Ma. in an R8 Zoning District, Precinct 2.

Sitting in on this hearing will be Bill Lavoie, Matt Vincent, Bob Orem, Sharon McDermot, and David Haraske.

**Paul Gagiardi, attorney for the applicant:** You have in front of you on these boards the plans of what the applicant is proposing to do, which is to put an addition onto the existing two family home, and to convert the two family home into a three family home. In order to do that, we have applied for a Finding under Section IX B, Extension and Alteration, because the existing structure, which was built in 1880, according to the assessors records, does not comply with the front yard setback requirement or the left side yard setback requirement. The front yard has 19 feet 7 inches from the property line and the requirement is 25 feet. On the left side yard setback, the distance between the left side of the structure and the left lot line is 4 feet 8 inches, and the requirement is 15 feet. In all other aspects, this lot complies. It has 16,988 square feet and for purposes of the conversion, we are required to have 12,000 square feet. There is 125.41 feet of frontage, and the requirement under the bylaw in the district is 80 feet. The rear setback existing is 55 feet, and with the proposed addition, the closest portion of the new structure will be 40 feet from the rear lot line. The right side of the existing structure is greater than 15 feet from the right side yard. After the new addition is built, it'll be 45 feet from the right side line. Height, stories, building area and open space, we are all well under the required dimensional requirements of the zoning bylaw. But to extend or alter the pre-existing non-conforming structure, we need a Finding by you that is not more detrimental to the neighborhood than the existing non-conforming structure. We need that finding under IX.B. We're also going for a special permit under Section XI K.1 to convert an existing two family dwelling into a three family dwelling, and because we do not meet all of the dimensional requirements of the zoning bylaw, we are seeking a variance from the provisions of Section XI K.1 Subsection 4 of the bylaw that says it meets all other dimensional requirements of the bylaw. Again, the reason for the variance is the left side yard, which we are at 4.8 feet from the left sideline of the property, and the requirement is 15 feet. Again, we believe that the variance is justified because of the placement of the existing structure on the lot. The structure was built in 1880 for the side and front for variance on. At the time it was built, no zoning requirements existed. To move it from its existing location may be possible but would create a severe financial hardship for the applicant or any future applicant due to the size and scope of the building that would need to move to come into compliance. Based upon the structure, the location of the structure, that this is what is causing our financial hardship, which is the basis for the variance that we are seeking tonight. Assuming we receive the variance, we believe that we comply with every other requirement of the bylaw. Under Section XI K.1, the requirements are that there be 12,000 square feet of area. We have 16,988 square feet. The minimum lot frontage has to be 80 feet, and the applicant's property has 125 feet. We show 6 parking spaces on the plan, and two proposals. We show 6 parking spaces up near the front. Then as an alternative, we have (speaker strayed away from the microphone). The number of dwelling units allowed in a pre-existing two family is three, and that is what we

are proposing. All health and safety regulations of the city and commonwealth, we are all in compliance. The findings required for special permits in general, the use requested is listed in the table of use regulations, and it is. The requested use is essential and desirable: we're proposing to supply quality residential rental property here, so we believe it is desirable, with no undue traffic congestion. We're talking one unit, two cars max. The requested use will not overload any public water, drainage or sewer. It will not. All the special regulations for the use under Section 11 of the bylaw have been fulfilled. We comply with all requirements of Section 11, except for those that we sought variances from. The requested use will not by its addition to the neighborhood, cause an excess of that particular use. This will not cause excessive conversions to three family dwellings. So I feel we comply with everything other than the few items we seek variances on.

**Matt Sherrill:** Bring me up to speed again. The variances you seek are for the front yard setback and left side yard setback. Those are the only two, for the existing structure, for the variance. (no further questions from the board) and (no abutters present wishing to speak for or against this project).

**Motion was made by Bob Orem to close and discuss, second by Sharon McDermot.**

**Matt Sherrill:** On the variance itself, he is asking for relief from the front setback and the left side setback.

1. Hardship? The position of structure on lot and shape of the lot.
2. Do the above features generally affect the district? No.
3. What is the substantial detriment to the public good if this application were granted? None.
4. Does this petition derogate from the intent of the bylaw? No.

**Motion by Sharon McDermot to close and vote on the variance, second by Bob Orem.**

**Bill Lavoie: Yes.**

**Matt Vincent: Yes.**

**Bob Orem: Yes.**

**Sharon McDermot: Yes.**

**David Haraske: Yes.**

**The variance has been approved.**

Special permit:

1. Does it currently exist in the table of uses? Yes.
2. Is it essential or desirable to the public convenience or welfare? Yes.
3. Will it or not impede public safety? No it will not.
4. Will not overload public systems? No.

Special Conditions:

1. In no instance will the lot be less than 12000 square feet. This meets that requirement.
2. Minimal lot frontage be at least 80 feet in the R8 zone and this has 125.
3. Does not apply.
4. All other dimensional requirements of the zoning district in which the conversion are met. We have given a variance for the two dimensional requirements that do not meet.
5. The maximum number of dwelling units allowed in any previously existing one family shall be two, and two family dwelling shall be three. So we are converting a two family dwelling into a three family.
6. In instance where the Board of Appeals is required to permit three dwelling units in a residential structure, the Board of Appeals shall require a Site plan that indicates off

street parking for at least 5 vehicles, and said plans shall indicate that no designated off street parking spaces are located in the required front yard setback of the zoning district in question.

**Bob Orem:** I suggest Option 2 parking plan appears to be preferable.

David Haraske agrees with that, as does Sharon McDermot, Matt Vincent and Bill Lavoie.

**Matt Sherrill:** Basically, according to the applicant, option number one exists now. So what you'd be asking them to do is abandon all of the parking that currently exists in the front yard setback, and move it all out back, correct? (Board replies yes, that is what we prefer).

Apparently there is some confusion here. For the sake of the fact that I feel we were remiss in not discussing the parking while we had the opportunity to do so and the application was open, I will agree to open the hearing again, regarding the parking that is currently there, and the two plans that are available, so the board can then ask any questions that may need to be asked. So I'll open it back up for public discussion.

**Ron Laffely from Focal Architects, 22 Lafayette Road, Salisbury, Ma.** Option 1 shows the current location where parking is. They park to the left side of the lot and to the right side. What we attempted to do is improve the right side parking by allowing people to drive in, park, maneuver onsite, and drive out, so you don't have to back out onto Elm Street. Option 1 would stay the same. Unit 1 would stay the same and would have to back out, as they do now. Option 2 is shown to show we could comply with parking behind the building, but there is a lot of wooded area there, and the lot drops down significantly. That is the reason for the two options.

**Sharon McDermot:** What about snow removal in winter? Is there enough room in the front, with plowing, etc.?

**Ron Laffely:** Yes, there is enough room. You can plow up next to the building on both sides. We've also vegetated the front with landscaping to screen the cars that would be there.

**Matt Sherrill:** If everyone is all set, I will close the open part of the meeting again. So we're back to number 6: in instances when the Board of Appeals is required to permit 3 dwelling units in a residential structure, the ZBA shall require a site plan that indicates off street parking for at least 5 vehicles in said plan, so indicate that no designated off street parking spaces are located in the required front yard setback of the zoning district in question, and being that they currently do exist in the front yard setback, what is the will of the board on this one?

**Bob Orem:** From the standpoint of safety, even though this is an existing situation that you're adding another structure, more people, more cars presumably, I just feel it would be better to get away from the parking spaces that are immediately adjacent to the sidewalk and the street. I think that's a good idea.

**Matt Sherrill:** But who can tell them there is no parking out front, and that parking is now out back?

**David Haraske:** That's true. But I've seen these situations before, and I have a discomfort level, if you have an option to move parking to the back, you are better off.

It only takes one incident to really make people thing "I wish I had done that." I really think the parking should be moved to the back.

A vote amongst seated board members hearing this case showed 4 out of 5 members want parking option #2. It will meet the Number 6 condition.

**Bob Orem:** I think that is one of the reasons for the requirement in the conditions, for conversions. It is safety as well as appearance.

**Ron Laffely:** I can live with it either way.

**Matt Sherrill:** Then Option 2 it is, with no stipulations, as long as we say that there were two options available, and that the ZBA requires Option 2, which meets number 6. So no stipulation is needed, since it meets number 6 with Option 2.

For all conversions, all health and safety regulations of the city and Commonwealth shall be met and a report to that effect shall be obtained by the applicant from the building inspector. No known health or safety regulations were present that we know of right now, so we're assuming that they all have been met. No application for a residential conversion / Special permit shall apply to the building inspector for a building permit or occupancy permit, unless and until a special permit for conversions is approved by the ZBA. Further, all building permits and occupancy permits issued by the building inspector shall be in conformance if any stipulated in the special permit approval (none). All proposals for conversions are subject to the special permit requirements and procedures set forth in Section X J of this bylaw. So are we all set that these special conditions in Section XI have been satisfied? (ZBA = yes).

Will not impair the character, health or welfare of the district? Will not.

Will not create excessive use in the neighborhood? Will not.

**Motion** to close and vote on the special permit was made by Sharon McDermot, second by David Haraske

VOTE

Bill Lavoie: Yes.

Matt Vincent: Yes.

Bob Orem: Yes.

Sharon McDermot: Yes

David Haraske: Yes.

Both **special permit** and **variance** have been **approved**.

**Motion** was made by Sharon McDermot to close the hearing, second by Matt Vincent.

December 11 is the next meeting. No meeting in November due to Thanksgiving holiday.

**Meeting adjourned at 8:00 P.M.**